

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARK P. DONALDSON,

Plaintiff,

CASE NO. 1:14-CV-620

v.

HON. ROBERT J. JONKER

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
et al.,

Defendants.

_____ /

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

The Court has reviewed Magistrate Judge Brenneman's Report and Recommendation in this matter (docket # 123) and Plaintiff Donaldson's Objections to the Report and Recommendation (docket # 124). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff's objections. After its review, the Court finds that Magistrate Judge Brenneman's Report and Recommendation is factually sound and legally correct.

The Magistrate Judge recommends dismissing Plaintiff's claims; denying Plaintiff's motion for primary jurisdiction; and denying Plaintiff's motion to file a third amended complaint. Plaintiff's basic objection is his own boilerplate claim – asserted repeatedly – that the Magistrate Judge did not construe Plaintiff's pleadings liberally. Plaintiff is mistaken. Moreover, not even the most liberal construction changes the fundamental point that Plaintiff does not articulate an injury tied to the regulation he wants to challenge and does not articulate facts raising a plausible claim against Defendant Strand. The Report and Recommendation carefully, thoroughly, and accurately addresses Plaintiff's claims and arguments. Nothing in Plaintiff's Objections changes the analysis. The Court agrees with the Magistrate Judge's conclusions that dismissal is appropriate and that Plaintiff's motions for primary jurisdiction and for leave to file a third amended complaint lack merit, for the very reasons the Report and Recommendation delineates.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (docket # 123) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that Defendants' Motions to Dismiss (docket ## 18, 20, and 33) are **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Primary Jurisdiction (docket # 25) and Motion for Leave to File a Third Amended Complaint (docket # 81) are **DENIED**.

This case is **DISMISSED**.

Dated: April 14, 2015

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE